333. If the relator is released from custody before service, the writ should, of course, be quashed. *Commonwealth* v. *Chandler*, 11 Mass. 83; *Barnardo* v. *Ford*, *supra*. But it has been held that a release of the relator on bail after service will not oust the court of its jurisdiction to make a final order. *Pomeroy* v. *Lappeus*, 9 Ore. 363. And similarly where the respondent made a motion for a continuance on the ground that the relator had escaped, the court refused the motion and proceeded to final judgment. *Ex parte Coupland*, 26 Tex. 386. On the other hand, it has been held, in accord with the present case, that although the relator escaped after service, the writ should be dismissed. *Hamilton* v. *Flowers*, 57 Miss. 14. And on principle it would seem that when it appeared that the relator was no longer detained, since the very purpose of the writ, the termination of his detention, was shown to have been accomplished, it should have been quashed. The subsequent surrender and confinement constitute a new detention for which a new writ should issue.

HABEAS CORPUS — JURISDICTION OF COURTS — FEDERAL AND STATE COURTS. — A federal circuit court on the petition of a railway corporation granted an interlocutory injunction against the North Carolina railway commissioners, etc., pending an inquiry under the direction of the court as to the constitutionality of a state act defining maximum railway rates. It enjoined them from enforcing these rates and from prosecuting the company or its employees for failure to obey the statute. *Southern Ry. Co.* v. *McNeill*, 155 Fed. 756 (Circ. Ct., E. D. N. C.). Notwithstanding the circuit court had taken jurisdiction, an inferior state court convicted an employee of the company for failure to comply with the act. He applied to the circuit court for discharge on a writ of *habeas corpus*. *Held*, that the petitioner be discharged. *Ex parte Wood*, 155 Fed. 190 (Circ. Ct., W. D. N. C.). See NOTES, p. 204.

INJUNCTIONS — NATURE AND SCOPE OF REMEDY — BINDING PERSON WITHOUT NOTICE. — An injunction was issued enjoining A, his agents, successors, assigns, and all persons whomsoever, from maintaining a liquor nuisance on certain land. The defendant subsequently purchased the land and violated the order. It was not shown that he had knowledge of the injunction. *Held*, that the defendant is guilty of contempt. *State* v. *Porter*, 91 Pac. 1073 (Kan.).

On principle strangers to the suit should not properly be included in an injunction, since their rights have not been adequately represented. *Cf. Boyd* v. *State*, 19 Neb. 128; 17 HARV. L. REV. 486. But where an injunction binds the defendant, his abettors, etc., all such persons are held in contempt if they knowingly violate the decree. *Fowler* v. *Beckman*, 66 N. H. 424. And even persons acting independently have been held guilty of contempt for doing an act, knowing it was enjoined. *Chisolm* v. *Caines*, 121 Fed. 397. The court argued in the present case that the decree created a restriction on the land binding against subsequent owners. Even this would not justify the punishment of a person who had no knowledge of the injunction, for no one can be culpable in disregarding an order of which he was ignorant. *State* v. *Lavery*, 31 Ore. 77. It is fallacious to argue that if the defendant escapes punishment the injunction becomes a nullity on a change of ownership in the land, for the party originally enjoined may be in contempt by procuring a violation. *Poertner* v. *Russel*, 33 Wis. 193. There seems to be no justification for the conclusion that the defendant is in contempt.

INJUNCTIONS — NATURE AND SCOPE OF REMEDY — PERPETUAL INJUNCTION AFTER LONG POSSESSION. — A township road had been travelled continuously for a longer period than that required by the statute of limitations, but it was not altogether clear that the road did not wrongfully encroach on the defendant's land. *Held*, that in view of the town's long occupation, the defendant is perpetually enjoined from obstructing the road. *Williams* v. *Riley*, 113 N. W. 136 (Neb.).

When the right at law of one who seeks an injunction against a continuing trespass has not been clearly established, equity will usually deny him relief. *Washburn's Appeal*, 105 Pa. St. 480. A temporary injunction will be granted,

however, when irreparable injury is threatened. *Santee River, etc., Co.* v. *James*, 50 Fed. 360. Once the right at law is proved, irreparable injury is not essential to entitle a plaintiff to permanent relief. *D., L. & W. R. R. Co.* v. *Breckenridge*, 57 N. J. Eq. 154. Further, even without proof of irreparable injury, relief has been given when the plaintiff showed merely a strong *prima facie* title. *McArthur* v. *Matthewson*, 67 Ga. 134. But the wisdom of making the injunction perpetual when the title is honestly contested and falls short of being absolutely proved is doubtful. In effect the court has held that, since the defendant probably has no title, it is proper to treat him as having none whatsoever — a limitation on his legal rights not warranted by the merits or by any overbalancing requirement of expediency. To grant a perpetual injunction, however, is not unsupported where there has been long possession. See *Sanderlin* v. *Baxter*, 76 Va. 299.

JUDGMENTS — FOREIGN JUDGMENTS — EQUITABLE DECREE AS A CAUSE OF ACTION IN ANOTHER STATE. — In an action to quiet title the plaintiff relied on a foreign decree, rendered in divorce proceedings, which ordered the defendant to convey the land to the plaintiff. The plaintiff contends that the decree is conclusive of the rights of the parties, and that a deed to the second defendant, who had notice of the decree, was fraudulent and conveyed no title. *Held*, that the plaintiff has neither legal nor equitable title to the land, since the foreign court had no jurisdiction over the subject-matter. *Fall* v. *Fall*, 113 N. W. 175 (Neb.). See NOTES, p. 210.

MUNICIPAL CORPORATIONS — FRANCHISES AND LICENSES — PERMIT TO PRIVATE PERSONS TO OPERATE A SPUR TRACK. — The defendants, proprietors of a department store, obtained from the Board of Estimate and Apportionment of the city of New York a permit to construct a spur track from the adjoining street railway into their basement, and to run express cars over it during the night for the conveyance of goods. The plaintiff, an adjoining property owner, sought an injunction restraining the taking of any steps under such permit. *Held*, that the Board has no power to grant such a permit, and that the plaintiff is entitled to an injunction. *Hatfield* v. *Straus*, 189 N. Y. 208.

The courts are very strict in forbidding rights in city streets for any but public uses. *Gustafson* v. *Hamm*, 56 Minn. 334. The operation of a short spur track differs only in degree from the operation of a street railway of some length, and such railways, unless operated for public service, have been almost universally condemned by the courts as public nuisances. *Fanning* v. *Osborne*, 102 N. Y. 441; *contra*, *Truesdale* v. *Grape Sugar Co.*, 101 Ill. 561. And it would seem that the general interests of the city would not be sufficiently furthered to justify such permits on the ground of public policy. See *People* v. *B. & O. R. R. Co.*, 117 N. Y. 150. If the permit should be granted to the street railway company, it might be said that the right was secured solely for the benefit of the shipper and was an evasion to secure a private right. *Commonwealth* v. *City of Frankfort*, 92 Ky. 149. On the other hand, it has been argued that such a track was a necessary incident to the carriage of freight, and that not until another shipper was refused a similar connection with the main track could it be said that such a track was a private privilege. *P. C., etc., Ry. Co.* v. *City of Cincinnati*, 16 W'kly L. Bul. (Oh.) 367.

PARTNERSHIP — NATURE OF PARTNERSHIP — SITUS OF DECEASED PARTNER'S INTEREST. — Two partners residing in England carried on the business of sheep farming in New South Wales. On the death of one partner his share in the business was assessed for probate duty in New South Wales as an asset situated there. *Held*, that the assessment is valid. *Commissioner of Stamp Duties* v. *Salting*, [1907] A. C. 449.

On the death of a partner his representatives have merely a right of action for his interest in any surplus that may remain after an accounting and an adjustment of the partnership affairs. By the common law view this right of action is against the surviving partner, who has the title to all the firm assets. *Case* v. *Abeel*, 1 Paige (N. Y.) 393; see 14 HARV. L. REV. 145. By this view